



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: NOVEMBER 22, 2022

IN THE MATTER OF:

Appeal Board No. 625143

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 625142 and 625143, the Appeal Board, on its motion pursuant to Labor Law § 620 (3), has reopened and reconsidered the decisions

of the Administrative Law Judge filed, May 19, 2022, that sustained the initial determinations holding the claimant ineligible to receive benefits, effective April 26, 2021 through May 2, 2021, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; and holding the claimant ineligible to receive benefits, effective May 3, 2021 through August 23, 2021, on the basis that the claimant did not comply with registration requirements.

At the combined hearings before the Administrative Law Judge, testimony was taken. There were appearances on behalf of the claimant and the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. The Judge did not offer the claimant an opportunity to request a subpoena to compel the production of his phone records from May 2021 through August 2021. The Board has determined to grant such an adjournment and to issue such a subpoena. The claimant is directed to produce his phone records from May 2021 through August 2021. If the claimant needs a subpoena in order to obtain his phone records, the claimant should contact the Hearing Section and arrange for the Hearing Section to issue a subpoena.

In addition, the claimant was not given an opportunity to cross-examine the testimony of Michelle Maldonado. At the further hearing, the Commissioner

should produce Ms. Maldonado and the claimant should be afforded to cross-examine the witness.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the claimant shall produce his phone records from May 2021 through August 2021. If the claimant needs a subpoena in order to obtain his phone records, the claimant should contact the Hearing Section and arrange for the Hearing Section to issue a subpoena; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER